Tong Chai Yon v Ong Seng Tio

HIGH COURT (MELAKA) — ORIGINATING SUMMONS NO 24–400 OF 1997
AUGUSTINE PAUL JC
20 DECEMBER 1997

Civil Procedure *— Trial — Urgent hearing dates — Application to extend a caveat — Whether caveator to be blamed for failure to apply for extension earlier — Whether issue of certificate of urgency is a misuse of the purpose for which it was intended — Practice Note No 3 of 1985*

The plaintiff's solicitor issued a certificate of urgency to have its summons — filed on 18 December 1997 — to extend a caveat be heard immediately. He was compelled to make this application as the Registrar of Land Titles had served on him a notice to remove the caveat which would expire on 28 December 1997 unless the period is extended by the court.

Held, dismissing the application:

The issue of the certificate of urgency in this case is a misuse of the purpose for which it was intended. The plaintiff had slept on his rights when he received the notice instead of having taken steps to have the caveat extended. He has only himself to blame for the delay in making the application. Of course, the position may be different if he had been prevented from making the application early for some valid reasons. No such reasons are specified in the certificate of urgency. Therefore, this is not an urgent application within the meaning of Practice Note No 3 of 1985 (see p 288G–I).

[Bahasa Malaysia summary

Peguamcara plaintif mengeluarkan sijil perakuan segera untuk membolehkan samannya — yang difailkan pada 18 Disember 1997 — untuk melanjutkan kaveat didengar dengan segera. Beliau terpaksa membuat permohonan ini kerana Pendaftar Hakmilik Tanah telah menyampaikan ke atasnya satu notis untuk membatalkan kaveat itu yang akan tamat pada 28 Disember 1997 melainkan tempoh masa itu dilanjutkan oleh mahkamah.

Diputuskan, menolak permohonan:

Pengeluaran sijil perakuan segera dalam kes ini adalah satu penyalahgunaan tujuan yang mana ianya dihasratkan. Plaintif telah membiarkan haknya apabila beliau menerima notis itu tanpa mengambil langkah untuk melanjutkan kaveat itu. Beliau patut menyalahkan dirinya sendiri kerana lewat membuat permohonan. Semestinya, keadaan mungkin berbeza jika beliau dihalang daripada membuat permohonan awal kerana sebab-sebab yang sah. Tiada sebab-sebab sedemikian diberikan dalam sijil perakuan segera. Oleh

itu, ini bukannya permohonan segera dalam ertikata Nota Amalan No 3 tahun 1985 (lihat ms 288G–I).] A

Notes

For a case on urgent hearing dates, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) para 4958. B

Legislation referred to

National Land Code 1965 s 326
Rules of the High Court 1980 O 32 r 3

Chuah Bee Ang (*Moi NK Koh & Chee*) for the plaintiff. C

Augustine Paul JC: Practice Note No 3 of 1985 was issued by the Rt Honourable Chief Justice to standardize the practice regarding certificates of urgency. It reads as follows:

Nota Amalan No 3 tahun 1985 D

Perakuan Segera

Bagi menyeragamkan suatu amalan berkenaan perakuan segera, Yang Amat Arif Hakim Besar mengarahkan bahawa di mana sesuatu permohonan yang dikehendaki untuk dibicarakan dengan segera atau dengan serta-merta, sama ada semasa mahkamah bercuti atau sebaliknya, suatu perakuan segera dalam contoh yang dinyatakan dibawah ini, yang ditandatangani oleh seorang peguambela dan peguamcara (dan bukannya oleh sebuah firma peguambela dan peguamcara) hendaklah difailkan. Perakuan tersebut hendaklah menyatakan dengan ringkas alasan-alasan yang disandarkan bagi memperakui bahawa perkara tersebut perlu disegerakan. Peguamcara-peguamcara dilarang mengeluarkan perakuan sedemikian melainkan mereka berpuashati bahawa perkara berkenaan perlu disegerakan perbicaraanya. E F

Jika pihak yang memohon perbicaraan segera atau serta-merta itu tidak diwakili oleh seorang peguambela, suatu affidavit yang mengesahkan alasan-alasan yang disandarkan hendaklah difailkan. G

Dalam menjalankan budibicara untuk menetapkan suatu tarikh awal bagi perbicaraan permohonan berkenaan, sebahagian besar dari budibicara itu hendaklah bergantung kepada alasan-alasan yang dinyatakan dalam mana-mana perakuan atau afidavit berkenaan.

The specimen certificate of urgency is in the following terms: H

BORANG

(*Tajuk seperti dalam guaman*)

PERAKUAN SEGERA

Saya (nama penuh peguambela dan peguamcara) dengan ini memperakui bahawa saman/usul/petisyen sebagaimana dalam lampiran bernombor ..... adalah perlu disegerakan perbicaraannya berdasarkan atas alasan-alasan berikut: I

(*Di sini nyatakan alasan-alasan dalam perenggan-perenggan bernombor)*

A Bertarikh pada ..... haribulan ..... 1985.

.....
(Peguamcara dan Peguambela)

B Perakuan Segera ini difailkan oleh Tetuan ..... Peguambela dan Peguamcara bagi pihak ..... yang tersebut di atas yang alamat penyerahannya ialah di .....

In order to receive urgent attention by the court, a certificate of urgency must:

C (a) be signed by an advocate and solicitor and not by a firm of advocates and solicitors; and

(b) state briefly the grounds on which the application requires to be heard urgently, or

(c) where the party applying for urgent or immediate hearing is not D represented by a solicitor, an affidavit affirming the grounds shall be filed.

Thus, the object of a certificate of urgency is clear. It is to be issued where a matter requires urgent and immediate attention by the court. It is a potent weapon in the armoury of the rules of civil procedure as it ensures E that an application is heard urgently or immediately, whether during court vacation or otherwise. It avoids the normal route that a matter filed in court takes for the fixing of a matter for hearing in accordance with the requirements of the Rules of the High Court 1980 ('the RHC'). Ex parte applications may be heard immediately. Inter partes applications which normally require service of the summons on every other party not less than F two clear days before the hearing date fixed may be directed to be heard earlier as authorized by O 32 r 3 of the RHC which reads as follows:

> A summons asking only for the extension or abridgment of any period of time may be served on the day before the day specified in the summons for the hearing thereof but, except as aforesaid and unless the Court otherwise G orders or any of these rules otherwise provides, a summons must be served on every other party not less than two clear days before the day so specified.

If the need arises, another matter which has already been fixed for hearing may have to be vacated in order to accommodate the urgent application. The court may even sit beyond its normal working hours to attend to the H matter. This will ensure that the doors of justice are always open to those who need its assistance urgently. The need for immediate injunctive relief, for example, may require the activation of the court process through a certificate of urgency. The Practice Note expressly stipulates that solicitors are not to issue such certificates unless they are satisfied that the application has to be heard urgently. The requirement for the certificate to be signed I by an advocate and solicitor personally signifies the importance attached to and the care that must be exercised in its issue. In my opinion, applications which require service must contain a statement on the possibilites of immediate service to enable the court to determine the hearing date. The

discretion to fix an early date for the hearing of the application will be based mainly on the grounds stated in the certificate or affidavit. It is therefore clear that the issue of a certificate of urgency is not an automatic passport for an accelerated hearing date. It will not be entertained by the court if the grounds stated in the certificate or affidavit do not have any merits.

In this case, the plaintiff filed an originating summons on 18 December 1997 to, inter alia, extend a caveat which he had entered on 23 May 1997 in respect of lands known as Geran No Pendaftaran 22774 Lot No 7637 Mukim Tangkak, Daerah Muar, Negeri Johor. The summons was supported by an affidavit affirmed by the plaintiff setting out the merits of his case. He was compelled to make this application as the Registrar of Land Titles had served on him a notice dated 29 October 1997 in Borang 19C pursuant to s 326 of the National Land Code 1965 ('the NLC') to remove the caveat in two months unless the period is extended by the court. The two-month period would expire on 28 December 1997. Thus in order to have the summons heard immediately, the plaintiff's solicitor issued a certificate of urgency, the material parts of which read as follows:

PERAKUAN SEGERA

Saya, Chuah Bee Ang, seorang peguambela dan peguamcara di Mahkamah Tinggi Malaya di Melaka dengan ini memohon supaya pendengaran saman pemula pemohon disegerakan atas alasan-alasan berikut:

(1) Satu perintah mahkamah yang dimeteraikan melanjutkan tempoh masa yang dicatatkan dalam Notis Berkenaan Dengan Cadangan Hendak Memotong Kaveat (Borang 19C) bertarikh 29 October 1997 perlu disampaikan kepada Pendaftar Hakmilik Tanah Negeri Johor pada atau sebelum 28 December 1997.

Bertarikh pada 18 haribulan Disember 1997.

To my mind, the issue of the certificate of urgency in this case is a misuse of the purpose for which it was intended. It is true that the plaintiff must have the caveat entered by him extended by 28 December 1997. To that extent, the application is urgent to him as far as he is concerned. But the need to have the caveat extended did not arise suddenly. The plaintiff was informed by notice dated 29 October 1997 of the intended removal of the caveat in two-months' time unless extended by order of court. Instead of having taken steps to have the caveat extended when he received the notice, the plaintiff slept on his rights. He is now making the application when the two-months' period specified in the notice is about to expire. He has only himself to blame for the delay in making the application. Of course, the position may be different if he had been prevented from making the application early for some valid reasons. No such reasons are specified in the certificate of urgency. In my opinion, therefore, this is not an urgent application within the meaning of Practice Note No 3 of 1985. Solicitors ought to be more prudent in resorting to this speedy form of justice. Its purpose and importance must not be undermined. Every effort must be made to restrict its use to the object with which it was introduced. However, the court as the final bastion of justice and in line with its policy

of giving early hearing dates, fixed the application for hearing on 20 December 1997 in accordance with O 32 r 3 of the RHC which stipulates that a summons asking only for the extension or abridgment of any period of time, as in this case, may be served on the day before the day specified in the summons for the hearing thereof. But that does not deflect from the gravity of what I have said on the object and purpose of a certificate of urgency.

When the case was called up for hearing on 20 December 1997, learned counsel requested for an adjournment as she was not able to serve the application on the defendant. Needless to say, the plaintiff would not have been placed in this predicament if he had acted with due diligence. As there was a possibility that the application would not be served by the time the caveat lapses, learned counsel applied for an ex parte order for the extension of the two-months' period pursuant to s 326(2) of the NLC. No circumstances as required by the section were advanced to me. Be that as it may, as the plaintiff's affidavit disclosed prima facie merits, I extended the caveat till 5 January 1998 with an undertaking in damages given by the plaintiff should he fail to have the two-months' period extended at the hearing date.

Application dismissed.

Reported by Loo Lai Mee